

**REMARKS/ARGUMENTS**

**CLAIM REJECTION – 35 U.S.C. § 103**

Claims 1-6 and 10 are rejected under 35 U.S.C. § 103 as unpatentable over DE 3140831 in view of Whitson-Fischman (U.S. Pat. No. 5,162,037). Claims 1-10 have been canceled. It is respectfully submitted that new claims 26-51 are not obvious over DE 3140831 in view of Whitson-Fischman for the reasons set forth below.

The Examiner states that DE 3140831 discloses a composition containing “peppermint/mint/cloves” and “menthol” which correspond to a composition containing an “additive for diminishing the odor characteristics of tobacco.” The Applicant respectfully argues that DE 3140831 in view of Whitson-Fischman merely shows a composition for breaking the smoking habit. Furthermore, DE 3140831 discloses that the composition may contain “peppermint, mint or menthol” as “flavouring agent[s]” (English Abstract) and not as additives for diminishing the odor characteristics of tobacco. Additionally, not all flavoring agents are suited for freshening the breath of a human. It would not be obvious to one skilled in the art that adding a flavoring agent would diminish the odor characteristics or freshen breath. A method for diminishing tobacco consumption while diminishing the odor characteristics of tobacco is not shown by DE 3140831, Whitson-Fischman, Cody (U.S. Pat. No. 5,716,635), or the admitted prior art.

While DE 3140831 in combination with Whitson-Fischman may show a composition including an extract of *Plantago major* in a dilute amount (0.1-0.5 wt.%), not all dilute amounts of therapeutic substances qualify as homeopathic preparations. DE 3140831 shows dilute amounts of *Plantago major* but gives no other indications that the extract is suitable for homeopathic remedy. Homeopathic preparations are known in the art to provide maximum

effect based on specialized dilutions and succussions (vigorous shakings) between dilutions also known as potentization. DE 3140831 shows no dilutions or succussions. While Whitson-Fischman generally discloses the proposition of using homeopathic preparations to treat chemical dependencies, it does not show specialized homeopathic dilutions of *Plantago Major* that are particularly effective against addiction to nicotine. Not all plant extracts are necessarily suited for homeopathic remedies and there is no support in Whitson-Fischman to show that *Plantago major* itself qualifies as a homeopathic remedy.

Furthermore, DE 3140831 shows a composition that is administered as a powder. Applicant's new claims show a composition that includes a spray canister delivery vehicle. Applicant submits that the DE 3140831 in combination with Whitson-Fischman does not show a composition contained by a spray canister for spraying into the mouth of a person in the need thereof.

The Examiner also rejected claims 1-2 and 7-10 as being unpatentable over Cody in view of Whitson-Fischman. Claims 1-10 have been canceled. It is respectfully submitted that new claims 26-51 are not obvious over Cody in view of Whitson-Fischman for the reasons set forth below.

The Examiner states that Cody discloses "liquid carriers/liquid core solvents" and "citric acid" as an additive for diminishing the odor characteristics of tobacco. Applicant respectfully submits that Cody merely discloses a mixture of *Plantago major* and *Hypericum perforatum* in a liquid core component to be delivered in a soft gelatin capsule. A liquid delivered in a soft gelatin capsule will not have any effect on diminishing the odor characteristics of tobacco, as it will be quickly delivered to the gastrointestinal tract by design. This is in complete contrast with Applicant's invention, which is targeted to

diminishing the odor characteristics of tobacco in the human mouth. Additionally, the new claims show a composition in a spray canister, where said spray canister sprays the composition into the mouth of a person. The composition then immediately diminishes the odor characteristics of tobacco and while administering a homeopathic preparation for reducing tobacco consumption. New Claim 43 also goes to the breath freshening additive of the composition that becomes the primary odor perceived upon exhalation.

In the case of Cody, the citric acid is used as a preservative (Column 6, lines 10-12) not as an odor diminishing additive. Therefore citric acid added to the composition in Cody is in an effective amount as a preservative, not as an odor-diminishing additive. As a preservative in a tablet or capsule, citric acid is delivered to the gastrointestinal tract and cannot act to diminish mouth odor and freshen breath.


The Examiner also rejected claims 1-2, 7-8 and 10 as being unpatentable over Whitson-Fischman in view of Cody. Claims 1-10 have been canceled. It is respectfully submitted that new claims 26-51 are not obvious over Whitson-Fischman in view of Cody for the reasons set forth below.

Whitson-Fischman shows a lollipop containing an extract of citrus seed. Applicant, in new Claim 35, claims a composition in a spray canister. Applicant submits that the composition containing a homeopathic preparation of *Plantago major* in a spray canister is not obvious over Whitson-Fischman in light of Cody. Additionally, there is no indication that extract of citrus seed acts an additive for diminishing the odor characteristics of tobacco, especially as it is used in both injectable form (Example 1) and in a transdermal patch (Example 24).

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

In the event that the fees submitted prove to be insufficient in connection with the filing of this paper, please charge our deposit account number 50-0578 and please credit any excess fees to such Deposit Account.

Respectfully submitted,  
**KRAMER & AMADO, P.C.**



Arlir M. Amado  
Registration No: 51,399

KRAMER & AMADO, P.C.  
Crystal Plaza One  
2001 Jefferson Davis Highway  
Suite 1101  
Arlington, VA 22202

Date: \_\_\_\_\_

*7/15/2003*